

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

PELC V. PELC

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STACEY M. PELC, APPELLEE,
V.
DARRIN E. PELC, APPELLANT.

Filed March 26, 2013. No. A-12-760.

Appeal from the District Court for Boyd County: MARK D. KOZISEK, Judge. Affirmed.

Darrin E. Pelc, pro se.

Steven A. Brewster, of Krotter Hoffman, P.C., L.L.O., for appellee.

INBODY, Chief Judge, and SIEVERS and RIEDMANN, Judges.

RIEDMANN, Judge.

INTRODUCTION

Darrin E. Pelc appeals pro se from a decree of dissolution entered by the district court for Boyd County, which dissolved his marriage to Stacey M. Pelc. On appeal, Darrin assigns error to the trial court's determination that the parties' marriage was irretrievably broken, as well as the provisions for visitation with the parties' three minor children. For the reasons set forth below, we affirm.

STATEMENT OF FACTS

Darrin and Stacey married in September 2009 and have three preschool-aged children. In July 2011, Stacey filed a complaint for dissolution of marriage in the district court for Boyd County. In his answer, Darrin denied that the marriage was irretrievably broken. At trial in July 2012, Darrin, who was incarcerated at the state penitentiary in Lincoln, Nebraska, represented himself.

Stacey testified that the parties' marriage was irretrievably broken. She stated that the couple had broken up and reconciled many times but that Darrin often exhibited extreme verbal

and physical abuse, sometimes in front of the children. No purpose would be served by detailing Stacey's allegations against Darrin, but she testified that any further effort to reconcile with Darrin would not be beneficial. Additional testimony showed that Darrin was incarcerated and was expected to be paroled in October 2012 and that the two older children had been removed for a time from the family home and placed into foster care.

In its August 2, 2012, decree, the district court observed that the parties had a tumultuous relationship involving physical and mental abuse, drugs, criminal proceedings, search warrants, and involvement of the juvenile court system. The court found that, under the circumstances, all reasonable efforts to reconcile had been made, there was no reasonable possibility of reconciliation, and the marriage was irretrievably broken and should be dissolved.

The court noted that Darrin was incarcerated and unable to care for the children and that there was no evidence that Stacey was unfit. Custody of the children was awarded to Stacey. The court stated that while incarceration alone was not a reason to deny parenting time, Darrin had presented no evidence concerning either the custody or parenting time he should have with the children. The court attached a parenting plan which contained no provision for visitation while Darrin remained incarcerated. The plan contained provisions for when Darrin was no longer incarcerated, providing him with supervised parenting time in Spencer, Nebraska, upon his completion of an anger management therapy program, an intensive drug and alcohol program, and family counseling. Darrin was not required to pay child support while incarcerated, but the court stated that an amount would be determined after his release from prison and after his earnings or earning capacity was established. Darrin timely appealed from this order.

ASSIGNMENTS OF ERROR

Darrin has challenged the district court's finding that the parties' marriage was irretrievably broken and its provisions for parenting time with the minor children.

STANDARD OF REVIEW

An appellate court's review in an action for dissolution of marriage is de novo on the record to determine whether there has been an abuse of discretion by the trial judge. *Klimek v. Klimek*, 18 Neb. App. 82, 775 N.W.2d 444 (2009). This standard of review applies to the trial court's determinations regarding custody, child support, division of property, alimony, and attorney fees. *Id.* A judicial abuse of discretion requires that the reasons or rulings of a trial judge be clearly untenable, unfairly depriving a litigant of a substantial right and a just result. *Id.*

ANALYSIS

As asserted in his answer to Stacey's petition to dissolve the parties' marriage, Darrin contends on appeal that the parties' marriage was not irretrievably broken.

If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

Neb. Rev. Stat. § 42-361(2) (Cum. Supp. 2012). Neb. Rev. Stat. § 42-360 (Reissue 2008) prohibits the entry of a dissolution decree “unless the court finds that every reasonable effort to effect reconciliation has been made.”

In the instant case, Stacey testified to instances of serious physical and verbal abuse on Darrin’s part, including death threats, which occurred at times in front of their young children. She stated that the marriage was irretrievably broken and that nothing had changed even after she attended several counseling sessions. Stacey testified that she did not wish to save the marriage and that further efforts to reconcile would not be beneficial. Under these circumstances, the court did not abuse its discretion in concluding that the marriage was irretrievably broken.

Darrin also argues that the district court’s parenting time provisions were erroneous. To the extent that Darrin complains about the lack of parenting time while he was incarcerated, his argument is apparently moot, as he was scheduled to be “released [from prison in] October, 2012.” Brief for appellant at 5. A moot case is one which seeks to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive. *Coleman v. Kahler*, 17 Neb. App. 518, 766 N.W.2d 142 (2009). To the extent that Darrin is challenging the restrictions placed on his parenting time with the children following his release from prison, his argument is without merit. The record fully supports the court’s decision to ensure that Darrin first complete personal counseling, as well as programs to address his anger and substance abuse problems, before he is permitted visitation with his children.

CONCLUSION

Under the facts of this case, we find that the district court did not abuse its discretion in finding that the parties’ marriage was irretrievably broken or in limiting Darrin’s visitation with the children upon his release from prison until such time as he completed programs to address his serious personal problems. The court’s dissolution decree is affirmed.

AFFIRMED.